BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 88-11-E - ORDER NO. 90-867

SEPTEMBER 13, 1990

IN RE: Application of Carolina Power & Light Company for General Increase in Rates and Charges) ORDER

On July 19, 1990, Nucor Steel filed a Petition for Rehearing and Reconsideration of the Order on Remand issued in this case on July 9, 1990. On July 23, 1990, Steven W. Hamm, Consumer Advocate for the State of South Carolina, filed an Amended Petition for Rehearing and Reconsideration of the Order.

The Commission has considered the petitions filed by Nucor and the Consumer Advocate and has determined that they should be denied. However, the Commission considers it appropriate to address certain issues raised in these two petitions.

Nucor's petition raises a number of issues relating to the distribution service voltage discount which was established in CP&L's 1987 general rate case (Order No. 87-902). The discount was continued with certain modifications and renamed the "transformation discount" in the Commission's Order on Remand in this case. Nucor contends that under the provisions of Large General Service Schedule LGS-64, as approved in the Commission's 1987 Order, it was entitled to receive the distribution service

voltage discount; that CP&L has wrongfully withheld the discount from Nucor and thereby overcharged it for electric service; that CP&L's proposed revisions to the Large General Service Schedule are discriminatory in that they deprive Nucor of its eligibility for the discount; and that the energy component of the discount should be higher than the level proposed by CP&L and approved in the Commission's Order on Remand.

All of these contentions are based on the assumption that under the Commission's 1987 Order, Nucor was in fact entitled to receive the distribution service voltage discount. This is an incorrect assumption. The relevant language from Large General Service Schedule LGS-64, as approved in Order No. 87-902, is as follows:

> When Customer owns the step-down transformation and all other facilities beyond the transformation, except Company's metering equipment, necessary to take service at the voltage of the distribution line of 12.47 kV or higher from which Customer receives service, the charge per kW and per kWh will be reduced by $0.60 per kW and $.0001 per kWh.

(Emphasis added.) This language shows that the distribution service voltage discount is available only to customers who receive service from a distribution line. No CP&L distribution line is involved here, and therefore there is no way this discount could lawfully apply to Nucor. As is clear from the testimony of Company Witness Edge (TR. Vol. 6 at 66), in the 1988 rate case, Nucor is served at transmission and does not receive service from a distribution line. The point of delivery of electricity from CP&L

to Nucor is at CP&L's transmission-to-distribution substation. The conductors leading from the substation to Nucor's plant are owned by Nucor, not CP&L. Instead of the distribution service voltage discount, as a transmission customer Nucor receives a different discount, which is made available through the Company's declining-block rate structure; the declining-block rate structure reflects the cost savings to CP&L resulting from a customer such as Nucor taking delivery directly from the transmission-to-distribution substation.

Since Nucor does not receive service from a distribution line, it was not eligible for the distribution service voltage discount under the Commission's 1987 order, and it has not been overcharged for electric service by CP&L. CP&L's proposed changes in the Large General Service Schedule, which were approved in the Commission's Order on Remand, do not take away Nucor's eligibility for the discount (since Nucor never was eligible) and do not discriminate against Nucor. Even if the energy component of the discount has been set at an improper level in this case, Nucor would not be harmed. However, the Commission does not find CP&L's proposed discount improper; on the contrary, it is supported by Hearing Exhibit No. 34, and the Commission finds it appropriate.

The Consumer Advocate contends that this Commission was inconsistent in its rulings on the depreciation study presented by CP&L. In its study, CP&L proposed revisions in the method of calculating test-year depreciation expense on each category of property included in rate base. The inconsistency alleged by

the Consumer Advocate relates to the calculation of depreciation on Group III fossil generating units--CP&L's least frequently used, and generally oldest, fossil-fired plants--and on nuclear generating units.

CP&L proposed to calculate depreciation on nuclear units in such a way that 95% of the total depreciable investment in a plant would be recovered five years before the expiration of the plant's operating license. Staff Witness Sheely objected to this aspect of the study, and the Commission agreed with his position. CP&L proposed to calculate depreciation on its Group III fossil units so as to recover 95% of the remaining depreciable investment in the plants within seven years. The Commission found this portion of the study appropriate.

The Commission sees no inconsistency in its findings on the depreciation study. Old, infrequently used fossil units differ substantially from nuclear units and do not have to be depreciated in the same way. The expiration of the useful life of a nuclear plant can be estimated with a reasonable degree of accuracy: its usefulness will cease when it is no longer licensed to operate. Under the circumstances of this case, the Commission saw no reason why 95% of the costs of such a plant should be recovered five years before its license expires. On contrast, the expiration of the useful life of a Group III fossil unit is quite uncertain. As Staff Witness Sheely pointed out (TR. Vol. 19 at 206), these units are cycling units, and a cycling unit is subject to greater deterioration, and greater uncertainty as to when it will

deteriorate, than a baseload unit. The Commission found that the best way to deal with this uncertainty was to accept the Company's proposal to recover 95% of the costs of the Group III fossil units within seven years and considers this finding fully compatible with its finding on the nuclear units.

The Consumer Advocate contends that CP&L's adjustment to annualize test-year payroll expense should not have been accepted, because it partially duplicated the adjustment to reflect increased operations and maintenance expense attributable to the completion of the Harris Plant, thereby resulting in a double recovery. The Consumer Advocate also contends that CP&L improperly included in test-year expenses certain legal fees that were incurred outside the test year. There is no evidence in the record to support the position of the Consumer Advocate on either of these issues. The Consumer Advocate states that the Company did not meet its burden of proof on those two issues. However, neither issue was raised by the Consumer Advocate until after the hearings were closed. Issues of this type, involving alleged accounting errors in a party's calculation of allowable expenses, revenues or rate base, should be raised during or before the hearings, so that the party whose accounting calculations are challenged will have the opportunity to offer evidence to explain them.

The Consumer Advocate points out that in a separate adjustment approved by the Commission, CP&L adjusted test-year operations and maintenance (O&M) costs upward by $5 million to reflect the fact that the Harris Plant went into operation during the test year,

resulting in the need for additional employees at the plant and thus in higher payroll costs. According to the Consumer Advocate, CP&L engaged in double counting by making a Company-wide payroll adjustment and at the same time adjusting Harris O&M expenses to reflect higher payroll costs.

Although the Consumer Advocate made this argument after the hearing was over, he never raised it at the hearing and never brought it up in his cross-examination of Witness Bradshaw. The Company was given no opportunity to address this issue in the hearing.

Accordingly, the Consumer Advocate has failed to show that the payroll adjustment was in any way improper, and the Commission's adoption of this adjustment is fully supported by Witness Bradshaw's testimony.

In his Petition for Rehearing and Reconsideration filed after the Commission's 1988 order was issued, the Consumer Advocate for the first time contended that the NCEMC and UMWA legal fees were incurred outside the test year. CP&L could have presented evidence on this issue if the Consumer Advocate had raised the question at the hearing.

It would be improper to require a utility's stockholders to absorb legal fees legitimately incurred as part of its ordinary business operations and charged to the test year in accordance with proper accounting procedure. The Commission's finding on legal fees is supported by substantial evidence.

The Consumer Advocate also seeks to reargue the issues

relating to the costs of the Harris Plant and the portions of these costs to be included in rate base, treated as abandoned plant and amortized, or disallowed. The Commission has examined these issues very thoroughly in its Order on Remand, and see no reason to modify the findings and conclusions set out therein.

The Consumer Advocate contended in his original briefs and at oral argument before the Circuit Court that the Commission improperly placed the burden on the intervenors to prove imprudence, rather than requiring CP&L to prove affirmatively that the costs of the Harris Plant were prudently incurred. The Consumer Advocate bases this argument on certain isolated sentences of the 1988 Order, where the Commission used the words "not persuaded" in expressing its decision that no costs had been incurred imprudently. In other parts of the 1988 Order the Commission very clearly pointed out that it had placed the burden of proof on CP&L.

However, even if there were some ambiguity in the 1988 Order as to the allocation of the burden of proof, there is none whatever in the remand order. The remand order does not use the expression "the Commission is not persuaded" that costs were incurred imprudently. At page 14 of the remand order the Commission expressly states that "[t]he Company has the burden of proving the reasonableness of the expenditures on the plant." There is no other language in the order to contradict, or cast doubt upon, this clear and explicit allocation of the burden of proof to CP&L. The Commission's removal of any possible ambiguity in its Order does

not violate the Circuit Court order in any way.

In the Commission's Order on Remand, the Commission eliminated $45,627 for Edison Electric Institute (EEI) dues. The Commission hereby orders CP&L to issue the appropriate refunds or credits plus interest at the rate of 12% per annum[1] and to make the necessary prospective rate adjustment. The refund should be issued beginning from the effective date of the original Order No. 88-864 and certified to the Commission within thirty (30) days of completion of the refund process.

CP&L is directed to refund by credit or by direct payment to each affected customer. Each customer will receive a bill insert explaining the refund process. CP&L is hereby directed to accomplish the refund operations, to certify the completion of the refunds, and to file with the Commission the appropriate calculations illustrating such action within thirty (30) days of completion. The certification should include the following: (1) first date that refund procedures are started; (2) date refund procedures are completed; (3) base refund; (4) interest amount on base refund; (5) total amount refunded; and (6) any refundable

1. There is no statute that specifically applies as to the proper rate of interest that should be computed against the principal amount. S.C. Code Ann. §34-31-20 (1976), as amended, states that the legal rate of interest for an account stated and sums of money due is eight and three-fourths percent (8 3/4%) per annum. The facts giving rise to this adjustment do not fit squarely within the purview of §34-31-20. Therefore, the Commission looked to S.C. Code Ann., §58-5-240 (Cum. Supp. 1987) to impute by analogy the bonded rate of interest. Since this is a refund of revenues associated with a rate request, the bonded rate of interest of 12% per annum is an appropriate guide.

amount not refunded.

CP&L shall file for approval new rate schedules with the Commission within thirty (30) days from the date of this Order reflecting elimination of the EEI dues.

IT IS THEREFORE ORDERED:

1. That Nucor's Petition for Rehearing and Reconsideration and the Consumer Advocate's Amended Petition for Rehearing and Reconsideration is denied.

2. That the refunds and prospective rate adjustment pursuant to the elimination of the EEI dues should be implemented as set forth hereinabove.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Marjorie Amos-Frazier
Chairman

ATTEST:

Executive Director

(SEAL)